

# Blacks, Cops, and the State of Nature

Raff Donelson\*

“Nasty, brutish, and short”<sup>1</sup>—these are the most famous words from Thomas Hobbes’s masterwork in political philosophy, *Leviathan*. These words also aptly describe some of the deadly encounters between American police officers and Black arrestees. I have in mind Eric Garner who was choked to death on the streets of New York City and Walter Scott who was gunned down in North Charleston. Corey Jones, Sandra Bland, Freddie Gray, Alton Sterling, Philando Castile, and many others have also died at the brutish hands of police officers. I also have in mind Micah Xavier Johnson, a Black man who killed five police officers in Dallas to avenge the deaths of Blacks who were slain.

There are two fascinating contentions in Hobbes’s *Leviathan*. First, Hobbes claims that there was once a time of lawlessness and unchecked violence among people, a situation scholars have come to call “the state of nature.”<sup>2</sup> Second, Hobbes claims that humans can collectively exit the state of nature, not by appeals to good will, religion, or the kindness of strangers, but by following their own rational self-interest. This essay suggests and defends two contentions. First, Black people and police are locked in a Hobbesian state of nature. Second, there may be no escape.

## I. LOCKED IN THE STATE OF NATURE

In the original setup, the Hobbesian state of nature is a bleak and dangerous place. We must specify “*Hobbesian* state of nature” to distinguish his idea from later, happier iterations by philosophers like Jean-Jacques Rousseau<sup>3</sup> or John Locke.<sup>4</sup> For human beings in the Hobbesian state of nature, life is characterized by

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\* Assistant Professor of Law & Philosophy, Louisiana State University. I thank Douglas Berman, Felipe Cole, Maya Dukmasova, Sothie Keo, Dan Puchalla, and the audience at the University of Wisconsin-Parkside for insightful conversation on the issues raised by this piece. I also thank the editors at the *Ohio State Journal of Criminal Law* for their help in improving this article.

<sup>1</sup> THOMAS HOBBS, *LEVIATHAN* (1651), *reprinted in* THE ENGLISH PHILOSOPHERS FROM BACON TO MILL 129, 161 (Edwin A. Burt, ed. 1939).

<sup>2</sup> This phrase does not appear in *Leviathan*. Hobbes calls this the “natural condition of mankind.” *Id.* at 159. The phrase, “state of nature” does however appear in Locke’s 1690 *Second Treatise of Government* and in many, many other places referring to a similar pre-government state of affairs.

<sup>3</sup> JEAN-JACQUES ROUSSEAU, *DISCOURSE ON THE ORIGINS OF INEQUALITY* (1755), *reprinted in* CLASSICS OF POLITICAL AND MORAL PHILOSOPHY 546, 546–60 (Steven M. Cahn ed., G.D.H. Cole trans., J. H. Brumfitt et. al., 2d ed. 2012).

<sup>4</sup> JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (1690), *reprinted in* CLASSICS OF POLITICAL AND MORAL PHILOSOPHY, *supra* note 3, at 450–516 (Steven M. Cahn ed., 2d ed. 2012).

absolute war or the threat thereof.<sup>5</sup> Cooperation is atypical. People in the state of nature get by on the fruit of their own labor, honest or dishonest. Sometimes, in the state of nature, people reap what they sow, and sometimes they steal what their neighbor has sown. Human beings in a Hobbesian state of nature unscrupulously look after themselves. It is not beneath them to lie,<sup>6</sup> to steal,<sup>7</sup> or to kill.<sup>8</sup> Any displays of kindness are exactly that: displays. People cannot trust each other in the state of nature. Hobbes describes the state of nature as “solitary,”<sup>9</sup> and as a setting where “[f]orce and fraud are . . . the two cardinal virtues.”<sup>10</sup> The state of nature is an epoch without law and without industry, for people are too scared of their neighbors to join in constructing anything time-consuming or complicated.<sup>11</sup>

Of course, Hobbes knew what any first-year anthropology student is itching to say right now: there never was a state of nature for the entire human race. Hobbes accepted this fact but suggested that a state of nature exists in some areas of modern life.<sup>12</sup> Hobbes escaped from England on the eve of the English Civil War and knew that state of nature conditions existed there. Hobbes also believed that a state of nature existed among the nations of the international community, for each polity is like an individual in the lawless, mistrustful, combative state of nature.<sup>13</sup>

Just as Hobbes saw that a state of nature could exist in some facets of life while civilization and modernity reign in other facets of life, we should see that, though we have civilization, there is nonetheless a state of nature between police and Black people in the United States, at least, as of late. Three facts bear this out: rampant violence between police officers and Black people, high levels of mistrust between police officers and Black people, and that the interactions between police officers and Black people are lawless.

First, there is the rampant violence. The *Washington Post* reports that 233 Black people were shot and killed by police in 2016.<sup>14</sup> There were 258 people

<sup>5</sup> HOBBS, *supra* note 1, at 161.

<sup>6</sup> *Id.* at 164 (“nothing is more easily broken than a man’s word” when there is no legal order to compel truth-telling and promise-keeping).

<sup>7</sup> As Hobbes puts it, “And in all places where men have lived by small families [that is, in a state of nature], to rob and spoil one another has been a trade . . .” *Id.* at 174.

<sup>8</sup> As Hobbes puts it, “where an invader hath no more to fear than another man’s single power [that is, when there is a state of nature]; if one plant, sow, build, or possess a convenient seat, others may probably be expected to come prepared with forces united, to dispossess and deprive him, not only of the fruit of his labor, but also of his life . . .” *Id.* at 160.

<sup>9</sup> *Id.* at 161.

<sup>10</sup> *Id.* at 162.

<sup>11</sup> *Id.* at 161.

<sup>12</sup> *Id.* at 162.

<sup>13</sup> *Id.*

<sup>14</sup> *Real Time Tracker of Individuals Fatally Shot by Officers in 2016*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2016/> [<https://perma.cc/7QMY-8C68>] (last visited Oct. 14, 2017); *Compilation of All Fatalities Caused by Police in 2015*, WASH.

killed in 2015.<sup>15</sup> These numbers may seem small when one considers that many more people die in natural disasters or car accidents, but those are inapt comparisons to make. When one compares the number of killings by police per one million persons across race and in different countries, one gets a rather startling picture. The U.S. Census Bureau estimated that there were 42,632,530 Black Americans in 2015.<sup>16</sup> Of that number, 258 of them were killed by police that same year. For Black people in America, the police killing rate is 6.05 per million. For White Americans, that rate is 1.99.<sup>17</sup> A Canadian newspaper, *The Independent*, estimates that the police killing rate for Canadians was 0.7 and that the rate for the United Kingdom is 0.04.<sup>18</sup> American police kill Black people three times as often as White Americans, and kill Black people 150 times as often as British police kill their people—that suggests outrageous levels of violence.

The second reason to think there is a state of nature between Blacks and police is the mistrust. This mistrust goes both ways. On the one hand, Black people do not trust police officers to treat them fairly. Black artists have long chronicled this deeply-held sentiment in stories. Richard Wright's "The Man Who Lived Underground" provides one example.<sup>19</sup> Jay-Z's "99 Problems" provides yet another. The officer portrayed in Jay-Z's rap pulls over the Black motorist-protagonist for a ridiculous and entirely made-up crime ("doing fifty five in a fifty four").<sup>20</sup> Black mistrust of police is not just the fancy of songmakers and storytellers. A recent Pew Research Center survey reports that eighty-four percent of Black people in America believes that they are more likely than Whites to

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POST, <https://www.washingtonpost.com/graphics/national/police-shootings/> [<https://perma.cc/5QPM-JYDN>] (last visited Oct. 14, 2017).

<sup>15</sup> *Compilation of All Fatalities Caused by Police in 2015*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings/> [<https://perma.cc/7QMY-8C68>] (last visited July 25, 2017).

<sup>16</sup> U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION BY SEX, RACE, AND HISPANIC ORIGIN FOR THE UNITED STATES, STATES, AND COUNTIES: APRIL 1, 2010 TO JULY 1, 2015 (2016), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> [<https://perma.cc/ME2Q-TT22>].

<sup>17</sup> This calculation is based on 2015 *Washington Post* figures for the number of Whites killed by police (495), *supra* at note 15, and on the July 1, 2015 U.S. Census, *supra* note 16, estimates of Whites (247,784,609). One thing of note, I did not sort out those of Hispanic ethnicity from the Census data, either from the population of Whites or the population of Blacks. This means that the killing rate of non-Hispanic Whites is likely even lower than the 1.99 mentioned in the text.

<sup>18</sup> Tom Baird, *Stop the Killing: Fatal Police Shootings in Canada*, THE INDEPENDENT (Apr. 14 2015), <http://theindependent.ca/2015/04/14/stop-the-killing-fatal-police-shootings-in-canada/> [<https://perma.cc/KZ55-KN4R>].

<sup>19</sup> RICHARD WRIGHT, THE MAN WHO LIVED UNDERGROUND (1944), *reprinted in* EIGHT MEN (1961).

<sup>20</sup> JAY-Z, *99 Problems*, on THE BLACK ALBUM (Roc-A-Fella Records 2004).

receive unfair treatment from police.<sup>21</sup> The same survey reports that roughly one-fifth of the Black population believes that they personally have been unfairly stopped by police officers.<sup>22</sup>

On the other hand, police officers mistrust Black people. The shooting of Tamir Rice is particularly relevant on this score.<sup>23</sup> Police officers shot and killed a twelve-year-old boy, mere seconds after seeing him in a Cleveland park. Officers did not try to discover whether the boy posed any threat to anyone. They did not ask him to put down the object that appeared to be a lethal weapon but turned out to be a BB gun. For all they knew, this could have been a suicidal boy for whom the appropriate response would have been to persuade him that life is worth living. But background mistrust told officers to place no faith in a Black boy's face. So they killed him. An array of studies have made it clear that police officers kill Black people at far higher rates than any other racial group,<sup>24</sup> even when there are controls for whether the victim is armed,<sup>25</sup> and whether the shooting takes place in a dangerous area.<sup>26</sup> This mistrust even extends to fellow officers. The State of New York organized a taskforce to produce a report on cases in which police officers have been shot by other officers because they were mistakenly thought to

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<sup>21</sup> PEW RESEARCH CTR., ON VIEWS OF RACE AND INEQUALITY, BLACKS AND WHITES ARE WORLDS APART 5, 11 (2016), [http://www.pewsocialtrends.org/files/2016/06/ST\\_2016.06.27\\_Race-Inequality-Final.pdf](http://www.pewsocialtrends.org/files/2016/06/ST_2016.06.27_Race-Inequality-Final.pdf) [<https://perma.cc/T8S6-QA5K>].

<sup>22</sup> *Id.* at 13.

<sup>23</sup> Charles M. Blow, Opinion, *Tamir Rice and the Value of Life*, N.Y. TIMES (Jan. 11, 2015), <http://www.nytimes.com/2015/01/12/opinion/charles-m-blow-tamir-rice-and-the-value-of-life.html> [<https://perma.cc/UUF3-T2N9>].

<sup>24</sup> See Cody T. Ross, *A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014*, 10 PLOS ONE 1 (2015), [journals.plos.org/plosone/article?id=10.1371/journal.pone.0141854](https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0141854) (relying on the U.S. Police-Shooting Database); Ryan Gabrielson, Eric Sagara & Ryann Grochowski Jones, *Deadly Force, in Black and White*, PROPUBLICA (Oct. 10, 2014, 11:07 AM), [https://www.propublica.org/article/deadly-force-in-black-and-white?utm\\_source=et&utm\\_medium=email&utm\\_campaign=dailynewsletter\\*\\*%23](https://www.propublica.org/article/deadly-force-in-black-and-white?utm_source=et&utm_medium=email&utm_campaign=dailynewsletter**%23) [<https://perma.cc/4JPA-RK8F>] (relying on data from the FBI's Supplementary Homicide Report). But see, PHILLIP ATIBA GOFF ET AL., CTR. FOR POLICING EQUITY, THE SCIENCE OF JUSTICE: RACE, ARRESTS, AND POLICE USE OF FORCE 20 (2016) (noting that Blacks are less likely to be killed by police after arrest than Whites arrestees). However, Blacks are more likely than Whites and Latinos to be arrested in the first place. Besiki L. Kutateladze et al., *Cumulative Disadvantage: Examining Racial and Ethnic Disparity in Prosecution and Sentencing*, 52 CRIMINOLOGY 514, 515 (2014). Moreover, Blacks are more likely than Whites to have charges dismissed after being arrested, which suggests that police arrest Blacks at levels incompatible with their guilt. *Id.* at 538.

<sup>25</sup> Sandhya Somashekhar et al., *Black and Unarmed*, WASH. POST (Aug. 8, 2015), [http://www.washingtonpost.com/sf/national/2015/08/08/black-and-unarmed/?utm\\_term=.eadbb720d46c](http://www.washingtonpost.com/sf/national/2015/08/08/black-and-unarmed/?utm_term=.eadbb720d46c) [<https://perma.cc/DLB9-G5C5>] (relying on the *Washington Post*'s own dataset).

<sup>26</sup> David Klinger et al., *Race, Crime, and the Micro-Ecology of Deadly Force*, 15 CRIMINOLOGY & PUB. POL'Y 193, 211 (2015) (micro-spatial analysis showing the police shootings are not most frequent in areas of higher levels of firearm violence).

be criminals.<sup>27</sup> The 2010 report reveals that a disproportionately high number of fatal police-on-police shooting victims have been Black.<sup>28</sup> About twelve percent of the nation's police officers are Black,<sup>29</sup> but thirty-eight percent of the fatal friendly-fire victims were Black.<sup>30</sup> In a particularly distressing but non-fatal case, a White officer shot a Black officer in uniform! All the shooter had to say in defense was that the other officer "fit[] the suspect's description."<sup>31</sup> What was the description? "Tall, thin, black male."<sup>32</sup> Clearly, the shooter's mistrust of Black people overwhelmed the fact staring him in the face: this was a uniformed officer. Even so, reasoning like someone locked in the state of nature, the shooter thought he couldn't be too careful, that he had to look out for himself, so he opened fire.

In mentioning the violence and the mistrust, I do not mean to castigate the police. None of this article is meant to castigate police. The police appear unreasonably violent and mistrustful only if one assumes that they are not in a state of nature. When we recognize that there is a state of nature, all their actions become reasonable, prudent even. As the haunting adage goes, they must shoot first and ask questions later. Asking questions first may mean death.

The third reason to think that police and Blacks are locked in a state of nature is the lawlessness with which police act. While most of us may understand the word "lawless" as a mere pejorative, Hobbes has something rather particular in mind. A group is in a state of lawlessness "where there is no power able to overawe them all."<sup>33</sup> To put this in more familiar terms, terms borrowed from the great German sociologist Max Weber, there is lawlessness when no one holds a monopoly on the legitimate use of violence.<sup>34</sup> When a facet of life is marked by civilization, the opposite of a state of nature, there is a sovereign who holds a monopoly on the legitimate use of violence. Only she may use violence to settle disputes, and only she may license others to use violence. When a facet of life is an instance of a state of nature, all parties can use violence, and there is no sovereign to stop them. Today, there is no power able to overawe the police.

If the government of the United States were such a power, police officers would be indicted, tried, and convicted for misconduct at levels commensurate

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<sup>27</sup> NEW YORK STATE TASK FORCE ON POLICE-ON-POLICE SHOOTINGS, REDUCING INHERENT DANGER (2010), [https://sites.hks.harvard.edu/criminaljustice-backup/publications/Police-on-Police\\_Shootings.pdf](https://sites.hks.harvard.edu/criminaljustice-backup/publications/Police-on-Police_Shootings.pdf) [<https://perma.cc/9LAY-JN2C>].

<sup>28</sup> *Id.* at 21.

<sup>29</sup> BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, LOCAL POLICE DEPARTMENTS, 2013: PERSONNEL, POLICIES, AND PRACTICES 5 (2015), <https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf> [<https://perma.cc/PQ2M-TBL9>].

<sup>30</sup> NEW YORK STATE TASK FORCE ON POLICE-ON-POLICE SHOOTINGS, *supra* note 27, at 21.

<sup>31</sup> *Id.* at 32.

<sup>32</sup> *Id.*

<sup>33</sup> HOBBS, *supra* note 1, at 160.

<sup>34</sup> MAX WEBER, *Politics as a Vocation*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 78 (H. H. Gerth & C. Wright Mills eds. and trans., 1958).

with their guilt or the evidence thereof. While it is impossible to know for certain whether this happens or not, there are reasons to doubt that police officers are indicted, tried, and convicted at levels commensurate with their guilt. We know that when police officers face possible indictment and trial, procedures skew to their favor.<sup>35</sup> We also know that the so-called “blue wall of silence,” the fact that police officers refuse to offer inculpatory evidence against their colleagues, affords officers an extra shield from conviction.<sup>36</sup> This might lead directly to my claim that lawlessness abounds with respect to police officers, but there is an alternative explanation, one that has been pressed by Professor Michelle Alexander, author of *The New Jim Crow*. Alexander thinks that police are just part of a larger apparatus to oppress Blacks.<sup>37</sup> Thus in Alexander’s view, police may seem lawless, but this appearance fades once one recognizes the true intentions of the sovereign. According to Alexander, police are supposed to do harm to Blacks and get away with it; that is just how the American State was designed.<sup>38</sup> Much is very persuasive in Alexander’s book, but this conspiratorial understanding of police violence against Blacks fails to account for structural relations between police and the rest of the State. These relations are best expressed by a simple story that took place in 2014.

In July 2014, New York police choked Eric Garner to death.<sup>39</sup> Garner was allegedly illegally selling cigarettes when officers approached him and attempted to arrest him.<sup>40</sup> Garner resisted being handcuffed, so Officer Daniel Pantaleo placed Garner in a chokehold, an action that was contrary to police protocol.<sup>41</sup> When Garner fell to the ground still being choked by Pantaleo, he repeatedly said that he couldn’t breathe until he lost consciousness and died.<sup>42</sup> After a video of the killing went viral, thousands of people in New York, and around the nation, and indeed the world, protested. Among the critics was the mayor of New York, Bill de Blasio.<sup>43</sup> On December 3, 2014, a grand jury decided not to indict Pantaleo for criminal misconduct with respect to his role in killing Garner.<sup>44</sup> On December

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<sup>35</sup> Kate Levin, *How We Prosecute the Police*, 104 GEO. L.J. 745, 757–67 (2016).

<sup>36</sup> See Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 237 (1998).

<sup>37</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 40–45, 103–08, 123–26 (rev. ed. 2012).

<sup>38</sup> *Id.* at 107.

<sup>39</sup> Deborah Bloom & Jared Imam, *New York Man Dies After Chokehold by Police*, CNN (Dec 8, 2014, 5:31 PM), <http://www.cnn.com/2014/07/20/justice/ny-chokehold-death/> [<https://perma.cc/9H69-5TQF>].

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Abby Ohlheiser et al., *No Charges for NYPD Officer in Apparent Chokehold Death; Justice Dept. to Investigate*, WASH. POST (Dec. 3, 2014), <https://www.washingtonpost.com/news/>

20, Ismaaiyl Abdullah Brinsley shot and killed two police officers, Wenjian Liu and Rafael Ramos, in retaliation for the murder of Garner.<sup>45</sup> Mayor de Blasio delivered eulogies at both officers' funerals, and police officers in attendance literally turned their backs on him as he spoke in an act of protest.<sup>46</sup> Shortly after the assassinations of Ramos and Liu, NYPD decided to have a slowdown.<sup>47</sup> Specifically, officers decided not to write tickets for the city and not to respond to non-violent crimes.<sup>48</sup> As a result, the city government lost millions of dollars in expected revenue.<sup>49</sup> What does this reveal about the relation between the sovereign, the elected government of New York City, and the police force? It reveals that the police hold the purse; therefore, the elected government cannot fully control them and gets embarrassed when it tries.<sup>50</sup>

This anecdote reveals that the relation between the State and police is not that of sovereign and subject. It is certainly not that the police are mere emissaries of the State. Rather, the relationship is best understood as a kind of confederacy, but not the kind of confederacy that leads to civilization. Hobbes contemplates temporary confederacies in the state of nature. For instance, Hobbes argues that no one can become the sovereign by mere strength of will and their own physical power, and this is because even the strongest person can be subdued by weaker ones acting in concert, in a kind of temporary confederacy.<sup>51</sup> Police and the State cooperate in just this way. They cooperate insofar as there is a common goal, but when that dissipates, so too does the confederacy. This kind of relation explains why some police officers can be subject to indictment, trial, and conviction. Sometimes, it is in the interest of the police force to surrender one of its own, fearing retaliation either from the State or more attacks of the sort that happened to

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post-nation/wp/2014/12/03/a-grand-jury-vote-in-new-york-police-involved-chokehold-case-could-come-soon/?utm\_term=.2e0882334725 [https://perma.cc/ZHS8-4X9A].

<sup>45</sup> Benjamin Mueller & Al Baker, *2 N.Y.P.D. Officers Killed in Brooklyn Ambush; Suspect Commits Suicide*, N.Y. TIMES (Dec. 20, 2014), <https://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-in-brooklyn.html> [https://perma.cc/4THR-MCTE].

<sup>46</sup> Andy Campbell, *Wenjian Liu's Funeral Draws Thousands of Officers, Supporters in Brooklyn*, HUFFINGTON POST (Jan. 11, 2015), [http://www.huffingtonpost.com/2015/01/04/wenjian-liu-funeral\\_n\\_6412894.html](http://www.huffingtonpost.com/2015/01/04/wenjian-liu-funeral_n_6412894.html) [https://perma.cc/7NME-TB78].

<sup>47</sup> Christopher Mathias, *Commissioner William Bratton Confirms NYPD Slowdown*, HUFFINGTON POST (Jan. 9, 2015), [http://www.huffingtonpost.com/2015/01/09/nypd-slowdown\\_n\\_6446392.html](http://www.huffingtonpost.com/2015/01/09/nypd-slowdown_n_6446392.html) [https://perma.cc/Z88X-RJP9].

<sup>48</sup> *Id.*; Patrick McGeehan, *Police Slowdown Cost New York City an Estimated \$5 Million in Lost Fines*, N.Y. TIMES (Jan. 14, 2015), <http://www.nytimes.com/2015/01/15/nyregion/police-slowdown-cost-new-york-city-an-estimated-5-million-in-lost-fines.html> [https://perma.cc/WQ44-BY8C].

<sup>49</sup> McGeehan, *supra* note 48.

<sup>50</sup> A historian and *Huffington Post* journalist echoes this point about embarrassment. Ian Reifowitz, *New York Police Department Turns Its Backs on Democracy*, HUFFINGTON POST (Mar. 14, 2015), [http://www.huffingtonpost.com/ian-reifowitz/new-york-police-departmen\\_b\\_6456766.html](http://www.huffingtonpost.com/ian-reifowitz/new-york-police-departmen_b_6456766.html) [https://perma.cc/UFF9-TCFL].

<sup>51</sup> HOBBS, *supra* note 1, at 159, 175.

Officers Liu and Ramos. But make no mistake, this tit-for-tat bargaining is not an instance of a sovereign enjoying a monopoly on the legitimate use of violence.

## II. NO ESCAPE

Having shown that the relation between police and Blacks is rightly understood as a state of nature, we can move to the second main argument of this article, that there may be no escape from this state of nature. To see why, we must begin by revisiting Hobbes's original explanation about how people escape.

According to Hobbes, individuals in a state of nature will exit because it is rational to do so.<sup>52</sup> People will tire of fighting, of looking over their shoulders, of not being able to plan for the future.<sup>53</sup> Therefore, people will agree to lay down their arms and surrender their natural right to self-preservation.<sup>54</sup> They will surrender this right to some person or group so that this person or group will hold a monopoly on the legitimate use of violence.<sup>55</sup> With everyone now allied to the sovereign, this person or group will be able to put down rebellions that occur.

It is important to note that, according to Hobbes, nobody lays down their arms to be nice.<sup>56</sup> People are not that nice, or better, people are not stupid enough to be that nice. Laying down one's arms when nobody else does is suicide. Everyone must agree, more or less, at once to disarm and must decide more or less at once upon the sovereign to whom one surrenders one's rights and weapons.<sup>57</sup>

Supposing this simultaneous surrender of arms, one might wonder why it would be rational for people to give away their weapons to the sovereign. Couldn't she wreak greater havoc now? Hobbes thinks not.<sup>58</sup> For the sovereign to remain in her position, she must ensure that the situation for the vast majority of persons in civilization is better than it would be in a state of nature.<sup>59</sup> If she terrorizes everyone every day, the people will rebel, seeing that they were better off without her. Of course, the sovereign should have little incentive to be tyrannical. She can build a palace, eat fine food that someone else prepared, wear fine jewels, and much else without making life so bad that people prefer the state of nature. People will not rebel because of inequality; for Hobbes, people will only go back to the state of nature if it holds the promise of better chances.<sup>60</sup> The

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<sup>52</sup> *Id.* at 176–77.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 177.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 175.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 174.



flipside is that people will only exit the state of nature if civilization holds the promise of better chances.<sup>61</sup>

Let us then return to the situation of American police. If Hobbes is right about human moral psychology, police will not exit the state of nature out of goodwill or to be nice. Again, this is not because police officers are mean-spirited or hard-hearted; rather, it is because they are not stupid. Police believe that laying down their arms right now is suicidal. Even obeying the laws is suicidal. If an officer decides to report another's misconduct, this 'snitching' officer is now endangered. The next time she needs help in a dangerous situation, help from fellow officers is not likely to be forthcoming.

Beyond this, there is a bigger reason why police are unlikely to leave the state of nature: maybe conditions are not bad enough. In their struggle against Black people, police officers may have received the short end of the stick. While more Blacks die at the hands of police than the reverse (41 police officers were killed in 2015,<sup>62</sup> versus 258 Blacks killed by police),<sup>63</sup> there are more than 40 times as many Blacks as there are police.<sup>64</sup> (An interesting question would be examining the number of police killed by Black people, but I have seen no data on this.) That people continue to become police officers and police officers continue perpetuating a cycle of rampant violence, mistrust, and lawlessness together suggest that there is not yet rational incentive for police to exit.

If police officers have no incentive to leave the state of nature, Black people cannot leave either. Being in a state of nature with a party is a reciprocal relationship. Only when both parties have sufficient reason to leave can either leave.<sup>65</sup> It may be that the violence visited upon Black bodies serves as a sufficient reason for Black people to want to exit. Sadly, leaving the state of nature is a two-way street.

One last provocative idea to share before concluding: body cameras are *not* a way to drag police out of a state of nature. It might be thought that police will be forced to abide by the laws established by the sovereign, that is, the elected governments of the United States, if they are forced to wear body cameras.<sup>66</sup> If

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<sup>61</sup> *Id.*

<sup>62</sup> FEDERAL BUREAU OF INVESTIGATION, FBI RELEASES 2015 STATISTICS ON LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED (2016), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2015-statistics-on-law-enforcement-officers-killed-and-assaulted> [<https://perma.cc/74F5-P6KH>].

<sup>63</sup> *Compilation of All Fatalities Caused by Police in 2015*, *supra* note 15.

<sup>64</sup> The National Law Enforcement Officers Memorial Fund estimates that there are more than 900,000 police officers. National Law Enforcement Officers Memorial Fund, *Law Enforcement Facts*, <http://www.nleomf.org/facts/enforcement/> [<https://perma.cc/MJK3-K99E>] (last visited Aug. 21, 2017).

<sup>65</sup> HOBBS, *supra* note 1, at 204.

<sup>66</sup> See, for instance, the mayor of D.C. extolling the virtues of body cameras for police. Peter Herman, *D.C. Police Have Now Equipped 2,600 Officers with Body Cameras*, WASH. POST (Dec. 15, 2016), <https://www.washingtonpost.com/local/public-safety/dc-police-have-now-equipped-2600->

cops wear body cameras, so this thought goes, they will be prosecuted in accord with their guilt. Maybe the persons that police encounter will be less likely to behave in a manner that apparently endangers the officer's life. This could ease the mistrust, allay the violence, and stop the lawlessness. Or so it seems.

Body cameras can be turned off. Paul O'Neal was a Black teenager who was shot by police in Chicago in August of last year.<sup>67</sup> Officers were wearing body cameras but conveniently turned them off when they killed O'Neal. Beyond body cameras, so long as cities and states rely on cops to make them revenue with which to operate, these 'sovereigns' can only do so much to control the officers.

The conclusion, then, is not a hopeful one. Police officers do not appear to be adequately incentivized to leave the state of nature on their own, and the panacea of body cameras looks ineffective. There may be workable solutions of an institutional sort, and, as a Black man, I certainly hope so. One also hopes that the foregoing has adequately shown that one thought must structure all efforts at reform, that police and Black people are currently in a state of nature.

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officers-with-body-cameras/2016/12/15/098733b8-c2dd-11e6-9a51-cd56ea1c2bb7\_story.html?utm\_term=.46895b3f6fe2 [https://perma.cc/8EA2-2W9B].

<sup>67</sup> William Lee, *Autopsy: Paul O'Neal Fatally Shot by Police in Back*, CHICAGO TRIB. (Aug. 17, 2016, 8:13 PM), <http://www.chicagotribune.com/news/local/breaking/ct-paul-oneal-autopsy-20160817-story.html> [https://perma.cc/3S2A-SZGY].